

## **CHAPTER 33-04-12**

### **CORRECTION AND AMENDMENT OF VITAL RECORDS**

|             |  |
|-------------|--|
| Section     |  |
| 33-04-12-01 | Amendment of Minor Errors on Birth Certificates During the First Year            |
| 33-04-12-02 | Amendments as a Result of Gender Identity Change                                 |
| 33-04-12-03 | All Other Amendments   |
| 33-04-12-04 | Who May Apply  |
| 33-04-12-05 | Amendment of Registrant's Given Names on Birth Certificate Within the First Year |
| 33-04-12-06 | Addition of Given Names  |
| 33-04-12-07 | Medical Items  |
| 33-04-12-08 | Amendment of the Same Item More Than Once  |
| 33-04-12-09 | Methods of Amending Certificates   |

**33-04-12-01. Amendment of minor errors on birth certificates during the first year.** Amendment of obvious errors, transposition of letters in words of common knowledge, or omissions on birth certificates may be made by the state registrar within the first year after the date of birth either by the state registrar's own observation or query or upon request of a person with a direct and tangible interest in the certificate as defined in section 33-04-13-01. When such additions or minor amendments are made by the state registrar, a notation as to the source of the information together with the date the change was made and the initials of the authorized agent making the change shall be made on the certificate in such a way as not to become a part of any certificate issued. The certificate is not to be marked as "amended".

**General Authority:** NDCC 23-02.1-04, 28-32-02

**Law Implemented:** NDCC 23-02.1-25(2)

#### **33-04-12-02. Amendments as a result of gender identity change.**

1. **Evidence and documents required.** The birth certificate of a person born in this state who has undergone a sex conversion operation may be amended as follows:
  - a. Upon written request of the person who has undergone the operation; and
  - b. An affidavit by a physician that the physician has performed an operation on the person, and that by reason of the operation, the sex designation of such person's birth certificate should be changed; and
  - c. An order of a court of competent jurisdiction decreeing a legal change in name.

2. **New certificate.** Pursuant to such amendment, a new certificate of birth will be created by the state registrar showing original data as transcribed from the original certificate excepting those items that have been amended. The new certificate will be clearly marked in the upper margin with the word "amended".
3. **Sealing of original certificate.** The original certificate shall be then placed in a special file and shall not be open to inspection except by order of a court of competent jurisdiction or by the state registrar for purpose of carrying out the provisions of North Dakota Century Code chapter 23-02.1 and properly administering the vital records registration program.

**General Authority:** NDCC 23-02.1-04, 28-32-02

**Law Implemented:** NDCC 23-02.1-04

### **33-04-12-03. All other amendments.**

1. **Provisions for other amendments.** Unless otherwise provided in this chapter or in the statute, all other amendments to vital records shall be supported by:
  - a. An affidavit setting forth:
    - (1) Information to identify the certificate.
    - (2) The incorrect data as it is listed on the certificate.
    - (3) The correct data as it should appear.
  - b. One or more items of documentary evidence which support the alleged facts and which were established at least five years prior to the date of the application for amendment or within seven years after the date of the event.
  - c. If the item to be corrected or amended is the date of birth, the state registrar may require additional documentary evidence established prior to the incorrect date of birth specified on the original certificate.
2. **Validity of evidence.** The state registrar shall evaluate the evidence submitted in support of any amendment, and when the state registrar finds reason to doubt its validity or adequacy the state registrar may reject the amendment and shall advise the applicant of the reasons for this action.

**General Authority:** NDCC 23-02.1-04, 28-32-02

**Law Implemented:** NDCC 23-02.1-25

#### **33-04-12-04. Who may apply.**

1. To amend a birth certificate, application may be made by one of the parents, the guardian, the registrant if of legal age, or the individual responsible for filing the certificate.
2. To amend a death or fetal death certificate, application may be made by the next of kin or the funeral director or person acting as such. Applications to amend the medical certification of cause of death shall be made by the attending physician or coroner.

**General Authority:** NDCC 23-02.1-04, 28-32-02

**Law Implemented:** NDCC 23-02.1-25(3)

**33-04-12-05. Amendment of registrant's given names on birth certificate within the first year.** Until the registrant's first birthday, given names may be amended upon written request of any of the following:

1. Both parents.
2. The mother, in the case of a child born out of wedlock.
3. The father, in the case of the death or incapacity of the mother.
4. The mother, in the case of the death or incapacity of the father.
5. The guardian or agency having legal custody of the registrant.

**General Authority:** NDCC 23-02.1-04, 28-32-02

**Law Implemented:** NDCC 23-02.1-25(3)

#### **33-04-12-06. Addition of given names.**

1. **Before seventh birthday.** Until the registrant's seventh birthday, given names, for a child whose birth was recorded without given names, may be added to the certificate upon written request of any of the following:
  - a. Both parents.
  - b. The mother, in the case of a child born out of wedlock.
  - c. The father, in the case of the death or incapacity of the mother.
  - d. The mother, in the case of the death or incapacity of the father.
  - e. The guardian or agency having legal custody of the registrant.

A certificate amended in this manner prior to the first birthday is not to be marked "amended".

2. **After seventh birthday.** After the seventh birthday, one or more items of documentary evidence must be submitted to substantiate the name being added.

**General Authority:** NDCC 23-02.1-04, 28-32-02

**Law Implemented:** NDCC 23-02.1-25

**33-04-12-07. Medical items.** All items in the medical certification or of a medical nature may be amended only upon receipt of a signed statement from those persons responsible for the completion of such items. The state registrar may require documentary evidence to substantiate the requested amendment.

**General Authority:** NDCC 23-02.1-04, 28-32-02

**Law Implemented:** NDCC 23-02.1-04

**33-04-12-08. Amendment of the same item more than once.** Once an amendment of an item is made on a vital record, that item shall not be amended again unless a court order is received from a court of competent jurisdiction.

**General Authority:** NDCC 23-02.1-04, 28-32-02

**Law Implemented:** NDCC 23-02.1-04

**33-04-12-09. Methods of amending certificates.**

1. **Procedures utilized in amending certificates.** Certificates of birth, death, and fetal death may be amended by the state registrar in the following manner:
  - a. Preparing a new certificate showing the correct information when the state registrar deems that the nature of the amendment so requires.

In the case of birth, such new certificates shall be prepared on a special form prescribed by the state registrar. The new certificate shall contain a space for inclusion of the amended item as it appeared on the existing certificate. It shall also include a summary of the evidence presented in support of the amendment and a certification statement by the state registrar that the state registrar has evaluated the evidence submitted.

For all other vital events, the new certificate shall be prepared on the form used for registering current events at the time of the amendment. The item number or the entry that was amended shall be identified on the new certificate.

In all cases the new certificate shall show the date the amendment was made and be given the same state file number as the existing certificate. Signatures appearing on the existing certificate shall be typed on the new certificate.

- b. Completing the item in any case where the item was left blank on the existing certificate.
  - c. Drawing a single line through the item to be amended and inserting the correct data immediately above or to the side thereof. The line drawn through the original entry must not obliterate such entry.
2. **Notations of amendments to be made.** In all cases, there shall be inserted on the certificate a statement identifying the affidavit and documentary evidence used as proof of the correct facts, the date the amendment was made, and the initials of the person making the change. As required by statute or regulation, the certificate shall be marked as "amended".

**General Authority:** NDCC 23-02.1-04, 28-32-02

**Law Implemented:** NDCC 23-02.1-04